

# Values and Ethics in Japanese Career Government Officials From the Meiji Era to the Present

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## 要 約

### 日本上級官僚の倫理観並びに価値観についての考察 明治時代から現代へ

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2000年4月1日国家公務員倫理法が施行された背景には、上級官僚たちの日常化した収賄の慣行や失われた国民の信頼回復がある。この論文では、一般国民と官僚たちの倫理観や価値観のずれが拡大した経緯を明治時代の天皇の官吏にたどり、第2次世界大戦後のGHQの官僚制の改革以後現在に至っても国民の公僕という概念が完全に内面化するにいたっていない現状を考察した。そして、その原因を歴史的経緯にてらし、効率性、行政のリーダーシップ、権力の集中、官僚の裁量の拡大等の側面から国家公務員倫理法の有効性を分析したものである。

第1章では、明治政府のアドバイザーであったドイツの社会学者ロエスラーのキリスト教的社会自由思想に基づく憲法をつくりたいという希望と裏腹に、天皇の神化、国体思想、そして、国粹主義色が支配的になった明治憲法が制定された経緯を論じ、神である絶対的な権力を有した天皇の官吏であるという認識は官尊民卑という考え方を広め、さらに天皇の官吏たちのエリート意識を助長したという背景を考察している。

第2章では、敗戦後連合軍のGHQにより大規模な広範囲にわたる民主改革がなされた中で制定された新日本憲法で、天皇は神からシンボルに位置付けられ、主権在民となり、かつての天皇の官吏は公僕と変化した、こうした180度違う組織変革並びに価値観や意識の変革を論じた。なかでもフーバー委員会は国家公務員法制定や人事院の前身である機関の指揮等の公務員改革に大きく貢献したのであるが、官僚制度改革は間接統治の為に思うようにははかどらなかった。そのような結果、行政権力や官僚の裁量権は拡大し派閥や省庁の既得権や特権争いが激化し腐敗が生まれた因果関係の分析を試みている。

最後の第3章では、過去10年間の上級官僚らの不祥事を分析し、解決策として5つの私案：1．権力の分散。2．裁量の減少。3．情報公開（情報の非対称性を正す。）4．倫理基準の構築。5．監督企業との個人的関係を排除する。をあげ、人事院による政策との共通点や相違点を論じている。

## Introduction

The National Government Officials Ethics Act passed the Diet on August 13<sup>th</sup>, 1999 and was enacted April 1<sup>st</sup>, 2000. There is a strong public concern about the ethics of public servants, following a series of scandals involving bribes, favoritism, and patronage by bureaucrats. Public distrust of bureaucrats seems to stem largely from a discrepancy between norms of ethics of career government officials and the public. In this thesis, I would like to shed light on how bureaucrats' ethics and values have progressed, given the dramatic perceptual role change from the Emperor's servants in the Meiji era to public servants after World War II. The paper examines why this notion of public servant has not been internalized into action in the minds of elite officials. It also explores how effective the newly enacted ethics Act may be in preventing misconduct and misuse of power by bureaucrats.

## Chapter 1

In the Meiji era, bureaucrats, as the Emperor's servants, cultivated a strong sense of their mental superiority to the public. Despite Roesler's<sup>1</sup> efforts to adapt 'social freedom' into the Meiji Constitution, the super nationalistic 'Kokutai' ideology constituted the central value of the nation.

### 1-1. Hermann Roesler's role in the making of the Meiji Constitution

Hermann Roesler, a German sociologist, was the most influential figure among the foreign advisors to the Meiji government, concerning formation of the Meiji Constitution. He considered the spirit of social freedom an offspring of the Christian idea of humanity. Social freedom, in his understanding, was Christian humanism. He thought that Christian ideas should be accepted everywhere in the modern world, and that the cultural development of Japan after the Restoration (1868) was moving toward the realization of these ideas. The process of the modernization of Japan involved progress in the awareness of social freedom. His constitutional theory rests on this optimistic faith. (Siemes 4-6)

Count Hirobumi Ito said, in the speech opening the deliberation of the Privy Council on the constitutional draft:

"In Europe, religion is the foundation of the State. The feeling and thought of the people is deeply penetrated by and rooted in religion. In our country, however, the religions represent no important force.<sup>2</sup> What alone can be the foundation is the Imperial House." (Siemes 43)

From this belief springs the first basic article of the Meiji Constitution<sup>3</sup> (written in 1888 and enacted in 1890): "The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal,"<sup>4</sup> which is the "kokutai" ideology and the faith of all leaders in the Meiji government.

Roesler was against this "kokutai" ideology. He believed that a constitution should be drafted in the modern 'spirit of social freedom', which he believed a more reliable formation for a modern political order than an irrational myth of the Emperor as a living god. However,

the traditional Confucian family ethics was put at the service of the state and the Emperor; the imperial throne appeared as the ground and center of all social relations.<sup>5</sup> “Kokutai” ideology gained power having been indoctrinated into the people, and then transformed into the form of Shinto, which eventually became a state religion. The official ethics was centered on devotion to the family and to the imperial house. Roesler worried that the worst effect of “kokutai” ideology was the extreme nationalism of a whole people. This ideology led the national consciousness into a belief in the divine mission of the Emperor and his people to govern the world. This religious nationalism became the life impulse of Japan, and made the growth of a Christian humanistic idea of the state and of personal freedom impossible. The ‘kokutai’ ideology derailed the actuation of the Meiji Constitution away from the direction of social freedom, which Roesler had envisaged as its goal.

### **1-2. Kanson Minpi (Government officials are superior to the general public.)**

After the Meiji Restoration in 1868, new Meiji government officials were granted a higher social status than regular Japanese by the entitlement system. Patronage remained the major hiring practice. When Hirobumi Ito, from the lower “Bushi”, warrior class, became the first prime minister of Japan in 1885, he introduced the government officer’s examination system, which consisted of two levels: career and non-career officials, in 1887. The examination system, coupled with an education system open to the public, fueled the public desire to become government officials. The Meiji government began the policy of hiring people of any social rank from “Shi No Ko Sho”: the four social ranks of Japanese feudal society: warriors, farmers, craftsmen, and merchants, by introducing a merit based examination system to establish the new government’s strength. Anyone from lower social ranks who passed the exam to be a government official would enjoy the social status of the warrior class. There is no doubt that this system contributed to the strong sense of elitism among government officials. For instance, “grade school ethics,” issued at the time by the Ministry of Education, stated that people must bow to government officials and politicians, and yield to them in the street. In this way the strong perception of “Kanson Minpi”, ‘government people as superior to the general public’ took root.

In 1887, government official service regulations were enacted. The first Article stipulates: “Government officials ought to be obedient and loyal to the Emperor and the Emperor’s government, and they ought to work diligently following laws, regulations and orders.” The Emperor appointed government officials<sup>6</sup> and they were expected to serve the Emperor wholeheartedly. A strong psychological bond existed between them. They served the country on behalf of the Emperor.

To pursue a career in government meant success in life, and the elitism of the bureaucrats was cultivated in people’s mindsets.

### **1-3. The School of Bureaucrats**

In 1899, a clear line was drawn by law between two high ranks, “Chokuninkan and Houninkan”, and the lower rank, “Hanninkan”. To be a “Houninkan”, applicants had to pass the high rank government official examination, and after serving several years, officials could be promoted to “Chokuninkan”, the highest rank in the bureaucracy. (Nishio 103)

However, the reality was that Imperial University<sup>7</sup> law students were exempted from high ranking government official examinations, and almost all hired in those high positions were Imperial University graduates. (104) This indicated that the examination held little significance, but the school system greatly contributed to producing a bureaucratic elite. Once hired, having privileged social status with lifelong job security, bureaucrats enjoyed tremendously good salaries compared to other occupations and to lower ranking officials.<sup>8</sup> In other words, this career system in the Meiji era, constructed a strong nature of exclusiveness in elite bureaucrats.

Government officials in the Meiji era were solely accountable to the Emperor. Given the privilege and authority government officials held in the bureaucracy, coupled with elitism, there were few forces to counterbalance and check bureaucrats' deeds.

## **Chapter 2**

In 1945, Japan lost the Second World War, and the General Headquarters of the Allied Powers (GHQ) occupied Japan. The major objective of the reform during the occupation was to establish a peaceful and accountable democratic government. Government officials' accountability shifted by the new Constitution from the Emperor to the public. The National Government Officials Act (NGOA) was enacted in 1948, which for the first time focused on providing efficient government services to the public. During and after the occupation, the administrative functions were enlarged, as was the bureaucrats' authority. In this environment, to avoid temptation to corruption, leadership and high professional ethics were needed.

### **2-1. The Reform**

After the end of the 2<sup>nd</sup> World War, Japan experienced lots of changes. First, the Showa Emperor declared himself no longer a God. Second, sovereign power came to reside with the people. Third, government officials became servants of the whole community and not of any group thereof.

The Constitution of Japan (1946)<sup>i</sup> and the National Government Officials Act (1948)<sup>ii</sup> were introduced by the GHQ as part of a democratic reform. The reform of the bureaucracy by bureaucrats was an inevitable consequence of the indirect occupation policy. Since GHQ chose to govern Japan through the existing Japanese government, bureaucrats<sup>9</sup> themselves executed the reform. Although there was external pressure, it was predicted that this internal reform of the bureaucracy would take a long time. Milton J. Esman<sup>10</sup> claimed that the reform of the bureaucracy needed a different approach from that of the military because of internal resistance to changing the organization and because of the drastic conceptual change from bureaucrats as the Emperor's servant to bureaucrats as the public servant. (Okada 4)<sup>11</sup>

#### **2-1-1. Resistance**

Among several missions dispatched from the United States to Japan, the Hoover Committee played the greatest role in implementing reform and creating the National Government Officials Act. On February 6<sup>th</sup>, 1947, in a meeting with Hoover, Prime Minister Yoshida, who then had a problem of redundant government workers and escalating union activities, asked Hoover for a public servant system reform in order to limit union activities. In return, Yoshida agreed to set

up a powerful civil service commission, called the National Personnel Authority (NPA), to administer personnel independently. It was designed to reduce the power of bureaucrats over administration in ministries because bureaucrats maintained significant discretion in policy decision making during occupation. Hoover became a Public Servant Section chief in the Department of the Army Civil Affairs Division in GHQ.

Not surprisingly, union activists and bureaucrats strongly opposed articles to prohibit strikes and to limit the authority of career government officials. As a result, the National Government Officials Act was finally enacted June 1<sup>st</sup> 1948 without such articles.<sup>12</sup>

Immediately after General MacArthur learned of this eviscerated Act, he sent a letter to Prime Minister Ashida on July 22<sup>nd</sup> 1948 to direct him to amend the Act according to the following:

- To introduce an independent and centralized personnel administration bureau.
- To introduce merit based hiring and a promotion system.
- To introduce the principle of equal pay for equal work.
- To establish a salary system based on job classifications.
- To improve efficiency and productivity through training for all government officials.
- To grant government officials the right to organize labor unions, but not the right to strike or negotiate.
- To forbid government officials to take a job from private for-profit entities which officials supervised, during the two years after retirement.
- To forbid government officials to engage in any other activities during working hours.

The Japanese Government issued an order on July 31<sup>st</sup> 1948, which included Article 1, that Government officials do not have the right of collective bargaining, Article 2, Government officials do not have the right to go on general strike and slow down. Finally this new Act was enacted on December 3<sup>rd</sup> 1948. (ii)

The intended reforms of systems and laws were completed and ready to activate. However, there still remained a question. Why would bureaucrats be willing to change their way of thinking or give up their vested interests, privileges and authority?

## **2-2. Growing Administrative Power**

Despite the ideal democratic concepts in the Constitution and the National Government Officials Act to constrain the bureaucrats' influence, administrative power, one of the three balancing powers<sup>13</sup> has grown, and administrative activities have expanded after the Second World War.

Public administration is the implementation process that realizes public policy. The definition of authority is the power to govern people; it is accorded to an individual or a group in order to attain goals. Kiyooki Tsuji mentioned, "Without authority, maintaining the stability of a state is hard. When people are willing to work together to reach goals without force, without violence or punishment, authority gains absolute stability." (3)<sup>14</sup> Tsuji claimed:

"Voters began to feel that Diet members did not represent their opinions, but their

grass roots activities more closely represented their political opinion than did the Diet. ... More diverse demands from the public required the government to expand national administrative functions. For instance, in the area of social security and social welfare, private firms became public organizations.” (5)

According to Tsuji, this shift from a legislative state to an administrative state had the following consequences:

- Administrative officials and interest groups or lobbyists had closer relationships because of direct contact with each other.
- The more powerful centralized bureaucracy was created to administer diverse and complex nature of works.

### **2-2-1. Efficiency**

The National Government Officials Act (1948) includes several “efficiency” Articles: 71 (efficiency base standard), 73 (efficiency improvement plan), and Article 1 (purpose), which stipulates: “This Act sets the standard for government officials to accomplish their job as efficiently as possible ... the purpose of this Act is to guarantee democratic and efficient service to the public.”

In order to increase efficiency, the Institute of Public Administration, then called the New York Bureau of Municipal Research was established in 1905 and the Commission of Economy and Efficiency appointed by President W. H. Taft, for the first time adapted scientific management techniques<sup>15</sup> to public administration.

In this management process, the following differences between business administration and public administration were identified:

- Public administration has multiple purposes to respond to multiple public needs, but the purpose of business is profit maximization for the firm.
- Public administration is accountable to the public; on the other hand, CEOs of for-profit firms have responsibility to their stockholders, not to the public as a whole. In other words, business administration can focus on benefiting a certain group of people, but public administration cannot narrow down the beneficiaries to a certain group.
- While business entities almost always have competitors, public administration is a monopoly since it has no competitors. Therefore, there is little incentive to be more efficient and effective without outside pressure. This increases the difficulty of administrative reform.

What kinds of efficiency should be sought by public servants? Woodrow Wilson said in his book “The Study of Administration”,<sup>16</sup> that administration exists outside of politics, and issues of administration and issues of politics are separate.(3) In this technical administration philosophy, administration is simply a process to implement political decisions most efficiently from a technical perspective. Rational means require rational goal setting, so that the co-relationship with politics (politicians set goals) necessitates administrative functions without interfering each other. However administration and politics interact and engage one way or another. The *raison d’être* of administration is not in the technical efficiency of policy implementation alone, but in

the discretion of involvement in the policymaking process. Paul Appleby calls this co-relationship a reciprocal or circular process.<sup>17</sup> (205)

The formula for 'economic efficiency' (Minimum Labor+Minimum Hours+Minimum Cost =Maximum Result) is problematic when responding to multiple needs, since one maximum output does not mean a maximum result for other purposes. 'Social efficiency', on the other hand, puts emphasis on maximizing social utilities. Although this is socially efficient, it might consume more than minimum labor, time and cost. As you observe, government work does not simply stay in the efficiency category. Moral obligation, fair distribution of output, accountability to society, and the social effects of policy implementation have to be considered with weight.

### **2-2-2. Leadership**

Leadership has played an important role as administrative activities expanded and diversified in accordance with public needs and social utilities. Leaders should have expertise, high moral standards, and the ability to understand what the public needs. Leadership is an ability to adapt to the changing environment internally and externally. Without ability to adapt to change through leadership, an organization will become defensive and fossilized. When bureaucrats become defensive to protect and expand only the interests of their ministry, sectionalism among ministries is strengthened. On the other hand, since the Meiji era, career bureaucrats have been successively drawn from Tokyo University Law school and have constructed an academic clique called "Gakubatu."

As organizations' functions enlarge, administration units develop closer relationships with certain interest groups, which often causes corruption. If benefits of public service are not distributed equally and fairly, it goes against Article 15 of the National Government Officials Act "All public officials are servants of the whole community and not of any group thereof."

### **2-2-3. Bureaucracy**

Max Weber claimed that bureaucracy is the most rational governing entity and functions most efficiently to attain goals for society. Weber singled out four key conditions for his rational bureaucracy: authority which enables a division of labor, hierarchy, specialization (hiring based on merit, not on patronage or favoritism), and disinterest. However, in reality privileged bureaucrats show interests in seizing political power, and tend to see themselves as equal to the state. In such an environment, the desire for power is nurtured, and eventually an organization's own interests can dominate the social/public interest. The former Head of the Ministry of Fishery (1986), Goroku Satake argued (1998):

"Bureaucrats are inclined to see themselves as guardians of the 'uneducated and unsophisticated public.' They have a firm conviction that they best understand administration and policies. When they work for certain interest groups or to protect their agency's vested interest, it is very likely that corruption will follow, because the decision making process for policy in Japan is oftentimes a closed door meeting between politicians, bureaucrats, and the interest groups concerned." (143)<sup>18</sup>

Authoritative influence is a determining factor in placing their public position higher than



the general public, and inducing officials to take advantage of their positions for personal gain. Arbitrary practices, abuse of power, or privileged perks are also sources of corruption of career government officials.

### **Chapter 3**

Over the past ten years, a series of scandals involving elite government officials has received great public attention. In this chapter, I will analyze several cases, including criminal ones, in which government officials were found guilty, and examine how effective this newly enacted ethics Act may be in preventing misconduct and misuse of power by bureaucrats.

#### **3-1. Cases**

##### ***Case 1, Recruit Co., Ltd. involvement of the Ministry of Labor (MOL) regarding regulatory administration and before-publicly issued stocks in 1988.***

The Vice Minister of MOL was found guilty of taking bribes. When he was the Chief of Human Resources, he leaked information to Recruit Co. about regulations regarding recruiting magazines, which were then under examination by MOL. He then received stocks before they were publicly issued from Recruit Cosmo Co., Ltd.<sup>19</sup>, from the president of Recruit Co., Ltd., knowing that these stocks were a payoff for a deferral of the regulations in question. The former section chief of the Human Resources Bureau was also found guilty of taking bribes. He had been lavishly wined and dined<sup>20</sup> and invited to play golf repeatedly in return for giving information about regulations of the magazine concerned and deferral of the regulations.

##### ***Case 2, Recruit Co. Ltd., with involvement by the Ministry of Education (MOE) regarding the selection of committee members and before-publicly issued stocks in 1988.***

The Vice-Minister of the MOE was found guilty of taking bribes. He chose Recruit personnel for various committees under the jurisdiction of MOE in order to make the committee decisions favorable to the Recruit Company. In addition, he purposely did not take any administrative action against high school teachers who had provided high school students' private information to the Recruit Company.

##### ***Case 3, Tokyo University Medical School pacemaker incident regarding medical equipment selection and bribe taking, in 1992.***

An Associate Professor of Tokyo University Medical School was found guilty of taking bribes. He was in charge of selecting pacemakers and operating implants with pacemakers, and he traveled abroad at the expense of pacemaker company A. He received money from A in return for choosing the A pacemaker. He, on another occasion, received money from pacemaker company B in return for choosing the B pacemaker for designated medical equipment.

##### ***Case 4, the Ministry of Finance (MOF) and excessive entertainment with lavish wines and dinners in 1995.***

The Chief of the Tokyo Customs Bureau of MOF and the Vice Chief of the Budget Bureau

of MOF had been repeatedly entertained by the CEO of a trust bank and a business consultant. After he was admonished by the Vice-Minister of MOF, he resigned.

***Case 5, the Ministry of International Trade and Industry (MITI) and excessive entertainment in 1996.***

Five career officials in MITI had been repeatedly entertained by CEO of a petroleum trading company, who was prosecuted for income tax evasion. The five of them received admonitions.

***Case 6, the Ministry of Health and Welfare (MOHW) and social welfare corporation involvement regarding national government grant and bribery, in 1996.***

The Vice-Minister of MOHW was found guilty of taking bribes. The Vice Minister of MOHW posted his subordinate in the position of Chief of the Social Welfare section in the local government, and solicited that Chief to offer a favorable arrangement about a national government grant for a special nursing home for the elderly run by a representative of a social welfare corporation who was a long-time friend of the Vice Minister. In return, the Vice-Minister received money from the representative in question.

***Case 7, the Ministry of Health and Welfare (MOHW) and social welfare corporation involvement regarding bribe taking, in 1996.***

The Chief of the Social Welfare section in the local branch office dispatched from MOHW, helped to ask local city officials, related construction companies, and related government agencies about hiring, loans, and special assistance for the social welfare company in question. In addition, the Chief gave favorable treatment to the company for inspections as well as for government grant decisions.

***Case 8, the Ministry of Health and Welfare (MOHW) and social welfare corporation involvement regarding bribe taking, in 1996.***

Eleven career officials in MOHW were admonished for repeated lavish wining, dining, and golfing and other inappropriate entertainment by the representative of the social welfare company in question.

***Case 9, MOF excessive wining, dining, golfing, and price discounting in 1998.***

In addition to receiving frequent entertainment invitations, on the day of the investigation, the head of the Financial Investigation division of MOF notified the bank's CEO of his desire to purchase a condo, suggesting that the CEO should arrange a special discount condominium deal for him. In return, he leaked information about an investigation to the financial institution.

***Case 10, MOF case in 1998.***

The Assistant Chief of the Financial Investigation division of MOF was found guilty of taking bribes. He leaked information to a bank about investigation dates and which branch offices of the bank would be investigated as well as investigation reports on other banks. In return, he

and his subordinates received repeated dinners and golfing invitations.

***Case 11, MOF case in 1998.***

The Investigator for the financial investigation section of MOF received excessive invitations to entertainment and gift certificates from the security firms he was in charge of, in return for favorable treatment of investigations.

***Case 12, MOF case in 1998.***

32 top career officials received disciplinary action including the Bureau Chief and 80 career officials. They were admonished for receiving excessive entertainment favors from companies they supervised directly.

***Case 13, the Defense Agency (DA) procurement bribery case in 1998.***

The top two executive officers of the Procurement headquarters of the Defense Agency were accused of malfeasance because they underestimated the amount of money required to pay by the electric company they contracted with for procurement. The Electric Company overclaimed the amount of defense equipment, and when it was discovered, the DA purposely underestimated the amount of reimbursement money from the company in order to protect the company's profit. In return, the two officials received money from the company.

***Case 14, the Social Insurance Bureau data concoction case in 1998.***

The Social Insurance Bureau officials concocted pension data and received pension money under a false name. They received disciplinary action. The Bureau at first did not disclose the incident to the public.

***Case 15, the Nagoya University Medical School R&D bribes case in 1998.***

A professor of the Nagoya University Medical School, in his Pharmacology seminar, used employees from three medicine makers and sales companies, and conducted experiments, using school laboratories and equipment for the private firm.<sup>23</sup> In addition to conducting experiments for R&D for new medicines using government properties, he provided data on the experiments to three companies and received money in return.

**3-2. Analysis**

Every one of the major cases above reveals that high-ranking government officials, one way or another, obtained personal gains by taking advantage of their position. There are four distinct characteristics in common:

- Top ranking administrative officials such as vice-ministers, agency and bureau chiefs were involved in scandals.
- Because of the top officials' involvement, and discretion in policymaking and decision making for "administrative guidance"<sup>22</sup> for private companies, the amount of the bribes is enhanced.<sup>23</sup>
- Excessive entertainment for the officials seems to be an everyday occurrence, un-

der the name of study sessions. (Satake 254)<sup>24</sup>

- Bribery takes various forms, such as entertainment in fancy restaurants, travels, golfing, an automobile, and a condominium as well as “descendant from heaven” (an appointment of a former official to an important post in a private company through influence from above).

Problems concentrate in decision making power and large bureaucratic discretion.

### 3-3. Probable Solutions

1. To decentralize power (To devolve authority to local governments.)
2. To lessen discretion.
3. To disclose information to the public. To correct asymmetry of information.
4. To set up specified ethics standards with effective penalties for violation.
5. To eliminate out of office personal relationships with private firms concerned.

According to the White Paper, although admitting the necessity of #1 in the policy making process, NPA does not have specific recommendations. Yet, NPA has an affirmative stance towards #2, 3, and 4 solution proposals.

Concerning solution number 3, according to the 1998 Public Servant White Paper<sup>25</sup> issued by the National Personnel Authority (NPA), the Personnel Administration system is under reexamination in order to regain the public trust. NPA plans to facilitate disclosure of information to the public, and at the same time to promote public engagement by obtaining public feedback on policy decisions and plans, through Public Comment,<sup>26</sup> surveys, and community based meetings. Concerning number 4, the National Government Officials Ethics Act was created.

Regarding #2 and #5, NPA has a unique idea: they plan to facilitate the official relationship between government and private firms. Transferring career government officials to posts in private firms and relevant local governments would be an opportunity for officials to accumulate wider and first hand experiences. According to NPA, it also would work to decrease discretion of bureaucrats because significant discretion stays in the power of the centralized national government. When they are outside of the central government, they have less discretionary authority than being in the national government. Instead of frequent closed door meetings with private firms to obtain information about private firms’ needs and functions, working outside of the central government lets bureaucrats have a chance to understand an organization’s needs from a company’s or a local government’s point of view.

In the past five years, the number of people who were approved by NPA<sup>27</sup> to serve in the private sector has declined (see the Chart 1.), however, approximately 1200 career officials reportedly “descend from heaven” every year.<sup>28</sup> The background for this large number of recruits is a customary practice that career officials retire from their government positions in their early 50’s, and each ministry or agency mediates employment placement for the officials.

Chart 1: The number of personnel transfers from government offices to for-profit companies approved by NPA.

1993	1994	1995	1996	1997	1998
208	209	190	136	119	91

It is doubtful that this policy would contribute to improving the career officials' professional and ethical conduct. It would rather cultivate the common ground of corruption on a wider scale, involving more stakeholders in a more sophisticated and legitimate way. More personnel exchange between public and private sectors would create a high risk of corruption, rather than prevent it.

### **3-4. The National Government Officials Ethics Act (NGOEA) 2000**

The National Government Officials Ethics Act (NGOEA), which was enacted on April 1<sup>st</sup> 2000, consists of six chapters. The objective of this Act is to require government officials to act ethically and professionally in order to recover public trust. The subjects this Act applies to regarding disclosure obligations and restrictions are career bureaucrats.<sup>29</sup>

The 1<sup>st</sup> chapter, Articles 1~4 stipulate general rules:

- Chapter 1, Article 1 (Purpose): Given the fact that government officials are public servants, be well aware that service shall be accountable to the public as a whole. The purpose of this Act is to establish a clear ethics standard as a guideline to observe and behave ethically in order to recover public trust, which was lost because of misconduct by government officials.
- Chapter 1, Article 3, Clause 1 (Basic ethics principle): Consciously be aware that government officials are public servants. Government officials shall not give information to a certain group of people to benefit them exclusively. Government officials ought to work fairly for the public.
- Chapter 1, Article 3, Clause 2: Government officials must consciously draw a line between public and private matters. Government officials must not take advantage of their position or authority for personal gain or the gain of their agency.
- Chapter 1, Article 3, Clause 3: Government officials must not receive gifts, or money from those under their authority or jurisdiction.

The 2<sup>nd</sup> chapter lists National Government officials ethics regulations:

- Chapter 2, Article 5: The Cabinet makes National Government officials ethics regulations as a government order that the Cabinet must consult with the National Government Officials Ethics Committee (NGOEC) for additional regulations and amendments, and that the Cabinet has an obligation to report to NGOEC if a new regulation is added or amended.

The 3<sup>rd</sup> chapter, Articles 6~9 describe obligations of reporting and disclosure of gifts and incomes:

- Chapter 3, Articles 6&7 (obligation to report about gifts and entertainment): A career official in a position of assistant manager<sup>30</sup> in agencies and ministries bears the duty to report to the head of his organization on gifts from concerned companies of 5,000yen or more at a time. The head of an organization is required to submit a copy of a report to the NGOEC.<sup>31</sup>
- Chapter 3, Article 8 (income report): Top career officials with a rank of "Shingikan", supervisory rank and higher, have an obligation to submit an income report to the head of their organization. There is no regulatory obligation to report on

their family members' income.

The 4<sup>th</sup> chapter, Articles 10~38 set up the National Government Officials Ethics Committee (NGOEC) in NPA:

- Chapter 4 (NGOEC responsibility, authority, appointment and term): NGOEC is an independent organization, which consists of one chairperson and four committee members. NGOEC advises the Cabinet as well as each agency or ministry regarding new ethics regulations, amendments or deletions. NGOEC has the authority to investigate and impose penalties according to the National Government Officials Ethics Act (NGOEA) and relevant laws.
- A chairperson shall be a person of integrity with high moral standards with an academic background in law and sociology including prosecutors and national university faculties. If not a prosecutor or national university faculty, those who have service experience within twenty years shall be eligible for a chairperson. The Cabinet appoints a chair with the consent of both houses and with the approval of NGOEC; the head of agencies and ministries can take disciplinary action against government officials who violate NGOEA. NGOEC has the liberty to request that the head disclose the content of disciplinary action, if necessary.

The 5<sup>th</sup> chapter, Article 39 is about Ethics Supervisor:

- Chapter 5, Article 39: Each administrative agency and ministry must have an ethics supervisor, who gives guidance and advice to officials according to NGOEA. Prior to the NGOEA enactment, Article 82 through 85 were amended to include NGOEA clauses. NGOEC can independently investigate officials under suspicion and can request the head to take a disciplinary action, which action shall be disclosed if NGOEC requests it.

The 6<sup>th</sup> Chapter, Articles 40~46 concern employees in national universities and special corporations.

The major change from the National Government Officials Act enacted in 1948 is an introduction of an Ethics Supervisor (ES) in each agency/ministry, establishment of the National Government Officials Ethics Committee (NGOEC) in NPA, and more specific regulations<sup>iii</sup> about receiving gifts in various forms than the National Government Officials Act stipulates.

### **3-5. Performance Evaluation**

The former Chief of the Fisheries Agency (1986), Goroku Satake claimed (1998), "Roles of Japanese bureaucrats are the equivalent of a combination of political appointees, Senator/Congress person's staffs, and lobbyist in the States so that it is inevitable that power concentration and wider discretion invite corruption." (236) Career officials spend most of their time coordinating and facilitating compromise among concerned parties-politicians, agencies and ministries, and industries in order to write drafts of bills with as little conflict as possible. Ministers usually have a couple of staff who mainly take care of political campaigning activities, and staff members do not write policy memos, but instead, high ranking officials write policy memos to their minister; in effect officials make policy decisions.

Their performance evaluation heavily depends on handling such operations smoothly.

Therefore, this structure reinforces their disinterest in outcomes of policy implementation as well as their efficient administrative and managerial skills. Their focus is not necessarily on how programs work for society, or what influence programs bring to the community in a long run, but rather officials tend to focus on coordinating interests of related parties in the short run. Satake assures us from his experience as a top career official that the idea, prevalent in the Meiji era (1868–1912), of leading ‘the uncivilized public’ with knowledge<sup>32</sup> and expertise, has remained a strong conviction in bureaucrats’ minds even now. (302)

NPA plans to facilitate disclosure of information to the public and to promote public engagement via public comment or community based meetings, yet bureaucrats are afraid of problematic information being leaked to the public because they fear public reaction. For instance, media coverage of dioxin detection in the ash in an incinerator stopped the government purchase of a site for an incineration plant. Since performance evaluation is based on how smoothly and un-controversially a plant site can be purchased, they fear if they fail to meet such expectations, they might lose a chance for promotion. The evaluation system should be reviewed and changed to one that is outcome/result oriented<sup>33</sup> rather than input oriented<sup>34</sup>. By raising awareness of the importance of NGOA and NGOEA among people as well as officials by setting clear objectives and goals, and by correcting asymmetry of information between both parties, and by introducing the outcome oriented performance evaluation system, the newly enacted Ethics Act could effectively regulate officials’ misconduct and misuse of power.

## **Conclusion**

Bureaucrats’ persistent sense of superiority has been cultivated with the notion of ‘Kanson-Minpi’, which took root in government officials’ minds in the Meiji era when officials served the country on behalf of the Emperor. During the occupation, when GHQ conducted a democratic reform, the government officials’ accountability shifted from responsibility solely to the Emperor to responsibility the public as a whole. As administrative power has grown, so has the bureaucrats’ authority. On the one hand, the National Government Officials Act emphasized efficient government service to the public; on the other hand, top-down leadership with enlarging discretion in career officials’ hands has invited numerous scandals. Receiving bribes and taking advantage of high government positions seems to be a bureaucratic culture.

In order to require government officials to act ethically and professionally and to recover public trust, the National Government Officials Ethics Act was enacted. To make best use of this Act, both government officials and the public should take the principle of NGOA and NGOEA as mission objectives. Toward these goals, the public should actively engage in the process of policy decision making via Public Comment feedback or grass root activities. By sharing more decision-making information with public, the government can alleviate strong public distrust and lessen public concerns about the ethics of public servants. In addition, performance evaluation of career officials must be exercised based on how well programs/policies work for the related community rather than on the smooth coordination among CEOs of firms and politicians concerned. Moral obligation, fair distribution of output, accountability to society, and the social effects of policy implementation have to be considered with weight. By doing so, the notion of public servant should be able to be internalized, and the new ethics Act would be effectively

deter officials' misconduct and misuse of power.

### Notes

- 1 Siemes, Jonannes. *Hearmann Roesler and the Making of the Meiji State*. Tokyo: Sophia Univ. Press, 1968.
- 2 Article 28 of the Meiji Constitution refers to the freedom of religious belief; Japanese subjects shall, within limits not prejudicial to peace and order, and antagonistic to their duties as subjects, enjoy freedom of religious belief. Ito comments on religious freedom by saying that freedom of religious belief is complete and exempt from all restriction, so long as manifestations of it are confined to the mind.
- 3 Count Hirobumi Ito wrote in *Commentaries on the Constitution of the Empire of Japan* in 1889, that the Emperor pays respect to the law; however, the law has no power to hold Him accountable to it. Article 3 proclaims that the Emperor is sacred and inviolable, which indicates that the Meiji government brought the myth of the Emperor as a living god into the law. Article 4 states that sovereignty rests on the Emperor.
- 4 Kowashi Inoue, then the Minister of the Foreign Ministry, explained the difference between the kings of Europe and the Emperor as follows: Kings conquer enemies and own their lands and people by power given by God, but they are not God. On the other hand, Japanese Emperors are sons of God and they are living Gods, so they do not need to own land or people but they reign and govern them by their own sacred power. (Siemes 12)
- 5 Relations between the public and the Emperor were explained as follows in the commentaries; the public is called "O-mitakara", 'Emperor's treasure' as seen in the poem in the 6<sup>th</sup> year of Tempyo (734 A. D.), "at the command of the Emperor ... happy are His Majesty's treasure ..." "... the Emperors made it their care to show love and affection to the people, treating them as the treasures of the country; while, on the other hand, the people have ever been loyal to the Sovereign, and have considered themselves as happy and blessed". (Ito 35)
- 6 The Meiji Constitution Chapter 2 Article 19 says that Japanese subjects may, according to qualifications determined in law or ordinances, be appointed to civil, military or any other public offices equally. The qualifications are proper age, payment of taxes, and passing of an examination.
- 7 Now called Tokyo Univ.
- 8 When lower rank officials earned 144~360yen per year, high rank officials earned 2000 for directors, 3000 for bureau chiefs, and 6000 for ministers, annually. Nishio, Masaru. *Public Administration*. Tokyo: Yuhikaku, 1993.
- 9 Personnel directly responsible for the war were purged from the government.
- 10 Milton J. Esman who served in the Civil Affairs Div. during the occupation as Lieutenant, sent a memorandum to the head of his division, "the reform on the Japanese bureaucracy" on January 30<sup>th</sup>, 1946.
- 11 GHQ/SCAP. *History of the Non-military Activities of the Occupation of Japan, 1945-1951*. Trans. Akira Okada. Eds. Amakawa, Arai, et al. *GHQ, The Reform on Public Servant System*. Tokyo: the Nihon Library Center, 1996.
- 12 Given this Act, labor union members persisted in excessive activities, such as boycotts and strikes, which lowered morale among government officials and created chaos and disorder in the society as a whole. The angry public demanded that the government take the right to strike and the right to collective bargaining from government workers.
- 13 Administrative, legislative, and judicial powers
- 14 Tsuji, Kiyooki. *Public Administration*. Tokyo: Tokyo Univ. Press, 1966.
- 15 Scientific management systems in the private sector such as the Ford system or the Taylor system, have been developed based on the idea of maximizing productivity with minimum cost and labor.
- 16 Wilson, Woodrow. "The Study of Administration". *Annals of American Government*. Washington, D. C: Public Affairs Press, 1955.



- 17 Appleby, H. Paul. *Morality and Administration in Democratic Government*. N. Y.: Louisiana State Univ. Press, 1952.
- 18 Satake, Goroku. *The View of Bureaucrats from My Experiences as a Career Government Official*. Tokyo: Yuhikaku, 1998
- 19 One of Recruit Co.'s subsidiary companies
- 20 More than 100,000yen per person per one time. Asahi newspaper home page: [www.asahi.com](http://www.asahi.com)
- 21 National university's property is under the supervision of the Ministry of Education. The university has no discretion to use its laboratory for a for-profit company's R&D.
- 22 Ministries provide 'administrative guidance' to local governments and private firms concerned to give them instructions about new regulations or rule changes.
- 23 The amount of bribes becomes higher in accordance with the degree of discretion.
- 24 "Study Session" is a meeting with bureaucrats, politicians, and CEOs of related firms, in order to obtain information for policy making in the side of bureaucrats and politicians, and to build a relationship with decision making government officials in the side of for-profit firms. This type of session is usually conducted in high class restaurants at the expense of private firms.
- 25 <http://www.jinji.admix.go.jp/hakusyo.htm>
- 26 The Public Comment Monitoring system started in 1999. Citizen volunteers are chosen to monitor public servants conducts if they act professionally, and ethically. Citizen monitoring volunteers submit a report to NPA regularly.
- 27 See the National Government Officials Act Article 103, Clause 3 in endnote ii.
- 28 Asahi newspaper homepage: <http://www.ashahi.com/0329/news/politics/29016.html>
- 29 The position of assistant manager or above in ministry and agency are subjected to these articles.
- 30 About four years to six years' service in the office brings the career official to the position of assistant manager, which for the non career official needs 15 to 20years of working experience in the government.
- 31 There is no regulatory obligation to report if the value of gift is less than 5.000yen, regardless of frequency.
- 32 The study abroad system for the career officials: they are eligible after 3years service in the government office.
- 33 What influence will this program bring to the relevant stakeholders? How would this program work for the community?
- 34 How much budget is necessary?

#### **i The Constitution of Japan (enacted in 1946)**

- The Preamble: We, the Japanese, acting through our duly elected representatives in the National Diet, determine that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolve that never again shall we be visited with the horrors of war through the action of government, and we do proclaim that sovereign power resides with the people and do firmly establish this constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representation of the people, and the benefits of which are enjoyed by the people.
- Chapter 1, Article 1 (the Emperor): The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.
- Chapter 3, Article 15 (Rights and Duties of the People): The people have the inalienable right to choose their public officials and to dismiss them. All public officials are servants of the whole community and not of any group thereof.

- Chapter 3, Article 19: Freedom of thought and conscience shall not be violated.
- Chapter 3, Article 20: Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.
- Chapter 3, Article 21: Freedom of assembly and association as well as speech, press, and all other forms of expression are guaranteed.
- Chapter 3, Article 28: The right of workers to organize and to bargain and act collectively is guaranteed.
- Chapter 4, Article 41 (the Diet): The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.
- Chapter 5, Article 99 (Supreme Law): The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this constitution.

## **ii The National Government Officials Act (enacted in 1948)**

Articles 96 through 106 consist of service regulations.

- Article 96 (Basic Principle): All government officials, as public servants, work for the public good, and commit themselves to service.
- Article 97 (Oath): Government officials have to take an oath according to a government ordinance.
- Article 98, Clause 1 (Obligation to follow laws and their superiors, and prohibits collective action): Government officials must faithfully follow laws and orders from their superiors related to work.
- Article 98, Clause 2: Government officials shall not exercise direct actions, such as going on general strikes and slow downs which undermine government efficiency and productivity. In addition, no government officials can scheme, collaborate, solicit or incite such actions against the government.
- Article 99 (Prohibition of actions which lose the confidence of the public): Government officials shall not act to disgrace their government job.
- Article 100, Clause 1 (Obligation to keep government information confidential): Government officials shall not leak any confidential information obtained through work, during and after their service in the office.
- Article 100, Clause 2: When a government official becomes a witness or an appraiser according to laws, and if he is requested to present information which he has obtained through work, he needs permission from the head of his agency to provide the information.
- Article 100, Clause 4: In the case of an investigation and examination by the National Personnel Authority, if it requests a government official to present confidential information that he has obtained through work, he must state the information. Otherwise, he will be penalized.
- Article 101, Clause 1 (Obligation to devote themselves to their work): Government officials, with exceptional cases, have an obligation to devote all of their working hours and attention to accomplishing government work, and government officials shall engage in government work only.
- Article 102, Clause 1 (Limitation of Political Activities): Government officials cannot ask or receive political donations or other profit by any means. Government officials cannot engage in any political activities besides suffrage.
- Article 103, Clause 1 (Separation from Private Companies): While he works in a government office, a government official cannot become a director, advisor, or trustee of commercial, industrial, banking, or other private, for-profit organizations, and a government official cannot run a for-profit company by himself/herself.
- Article 103, Clause 2: A government official, for two years after retirement, cannot accept a job offer from a for-profit organization which had close relations with his department or agency during the five year period, prior to his retirement.

- Article 103, Clause 3: NPA maintains the right to grant exceptions for Article 103, Clause 2.
- Article 104 (Limitation of involvement in non profit organizations): A government official needs permission from the Prime Minister or head of his agency to work for and be paid by a non-profit organization as a director, advisor, or trustee.

### **Regulations of Violations (the National Government Officials Act)**

When this Act was enacted in 1948, only Article 103, taking a job in a for-profit organization had a criminal penalty of imprisonment and a fine.

As of 1999, penal regulations of Chapter 4 have two Articles, which stipulate criminal penalty for violations of service regulations.

- Article 109 imposes penalties of imprisonment of less than one year, or a fine of less than 30,000 yen for violations of Article 100, Clause 1 and 2 concerning leaking of confidential information, and against violations of Article 103 of taking a job in a profit origination.
- Article 110 imposes penalties of imprisonment of less than three years, or a fine of less than 100,000yen for violations of Article 98, Clause 2 concerning collaboration, solicitation, inciting, or scheming activities against the government, for violations of Article 100, Clause 4, and violations of Article 102, Clause 1 concerning political activities.

### **iii Examples discussed by NPA**

*Government officials shall not receive the following things from parties concerned.*

- Real estate and money including congratulatory and farewell money.
- Entertainment (wines and dines, and golfing)
- Free services and special price arrangements regarding loans, rent for house, and before publicly issued stocks.

*Exceptions*

- Tea, snacks, and regular meals in conferences.
- Borrowing office supplies and free car ride during official visits to companies under their jurisdiction.
- Free PR goods and gifts, such as pens, handkerchiefs, and a pair of socks.

*Government officials shall not do the following even if they pay for themselves.*

- Golfing, travels, dinners with parties concerned.
- Having breakfast, lunch, and dinners, or parties with company's personnel concerned.

Exception can be made if the ethics supervisor says it is not unethical behavior, and if the parties have known each other prior to their business relations.

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(Received June 21, 2001)